

THE UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

AGUSTIN MORALES-RIVERA

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

CIVIL NO. 97-2183 (RLA)

Criminal No. 91-299 (RLA)

ORDER DISMISSING PETITION AS UNTIMELY FILED

Pursuant to the opinion of the United States Court of Appeals for the First Circuit in Agustín Morales-Rivera v. United States, No. 98-2073, slip op. (1st Cir. August 25, 1999) we ordered the U.S. Government to file a response to MORALES-RIVERA's allegation that he placed his 28 U.S.C. § 2255 petition "first-class postage prepaid in the institution internal mail system before the last day of filing."

Having reviewed the United States' response as well as petitioner's reply thereto¹ the Court finds that petitioner is not entitled to the Houston v. Lack² exception to the filed-upon-receipt rule because he did not "do[] all that he... c[ould] reasonably do to ensure that the documents [we]re received by the clerk of the court in a timely manner." Thomson v. Raspberry, 993 F.2d 513, 514 (5th Cir. 1993). Failure to stamp or **properly address** outgoing mail or to follow reasonable prison regulations governing prisoner mail does not constitute compliance with this standard. Id., at 515 (emphasis added).

In the case before us, MORALES-RIVERA alleges that he placed h

¹ See the United States' Motion in Compliance with Order (docket No. 26) and Petitioner's Objections to Government's Motion in Compliance with Order (docket No. 30).

² 487 U.S. 266, 108 S.Ct. 2379 (1988).

petition in the institutional mail system "before the last day of
1 filing". We assume, therefore, that MORALES-RIVERA was aware of the
2 April 24, 1997, deadline imposed by the Antiterrorism and Effective
3 Death Penalty Act of 1996 (AEDPA), Public Law 104-132, which became
4 effective on April 24, 1996.

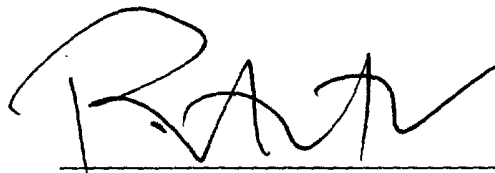
5 MORALES-RIVERA however, did not address his petition properly.
6 He failed to fill in the complete postal zip code number, reason for
7 which the Post Office returned his package for insufficient address.
8 However, upon receipt of the returned correspondence, petitioner did
9 not expeditiously re-mail his petition cognizant that he was facing
10 a statutorily-imposed time limitation. Instead, he delayed re-
11 sending it for an additional three months, obviously not diligently
12 nor responsibly "ensur[ing] that the documents were received by the
13 clerk of court in a timely manner".
14

15 We find that Mr. MORALES-RIVERA did not do "all he could under
16 the circumstances" to ensure that his petition, which was running
17 against a time limitation, was timely filed. Cf., Fallen v. United
18 States, 378 U.S. 139, 144 (1964). We therefore hereby dismiss the
19 same as untimely.

20 Accordingly, AGUSTIN MORALES-RIVERA's motion to vacate his
21 sentence pursuant to 28 U.S.C. § 2255 is hereby dismissed.

22 IT IS SO ORDERED.

23 In San Juan, Puerto Rico, this 9th day of August, 2001.
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RAYMOND L. ACOSTA
United States District Judge